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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, ET AL., *Appellants,*

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors, *Appellees.*

On Appeal from the Supreme Court of Arizona

BRIEF FOR MEMORIAL HOSPITAL AND HENRY EVARO

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BRIEF FOR MEMORIAL HOSPITAL AND HENRY EVARO

OPINION BELOW

The opinion of the Supreme Court of Arizona is reported at 108 Ariz. 373, 498 P.2d 461 (1972).

JURISDICTION

This action was brought in the Superior Court, Maricopa County, Arizona, by appellants Memorial Hospital and Henry Evaro against the County. Memorial is a nonprofit hospital, and Evaro is a resident of Maricopa County who had resided there for less than one year. The sole question was whether the

County was obligated to provide free medical care in the light of an Arizona statute, A.R.S. § 11-297 A, which conditioned such care upon one year's residence. The trial court held the statute invalid (A. 24). The Supreme Court of Arizona vacated this judgment with an opinion dated June 30, 1972 (A. 33-38), and denied rehearing on September 12, 1972 (A. 39). A Notice of Appeal was filed on October 12, 1972. This Court noted probable jurisdiction on March 19, 1973, and has jurisdiction under 28 U.S.C. § 1257(2).

STATUTE INVOLVED

A.R.S. § 11-297 A is as follows:

> "A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, *and that he has been a resident of the county for the preceding twelve months.*" (Emphasis added.)

QUESTION PRESENTED

Does a statute of the State of Arizona requiring a one-year residence in a given county for welfare medical care conflict with the due process, equal protection, and privileges and immunities clauses of the Four-

teenth Amendment of the Constitution of the United States, with particular reference to the "right to travel"?

STATEMENT OF THE CASE

Henry Evaro is an indigent suffering from a chronic asthmatic and bronchial illness. He became a resident of Maricopa County in early June, 1971, having moved from New Mexico. On July 8, 1971, Mr. Evaro experienced an acute and severe attack of his chronic illness. His attending physician recommended hospitalization, and he was referred to the plaintiff Memorial Hospital (Memorial), a nonprofit institution in Maricopa County, Arizona (A. 10).

Pursuant to procedures followed under the Arizona statute, Memorial, finding itself with an indigent patient who might qualify for County care, properly notified the County requesting that the County hospital accept the patient. Under the applicable procedures, if the County was able to accept the patient, it was to notify Memorial within twelve hours. The County hospital did not respond within the twelve-hour period.

Memorial provided care and services for Mr. Evaro, at a cost of $1,202.60. The hospital, in accordance with the approved reimbursement procedures, then claimed reimbursement from the County for this sum. The County refused such reimbursement solely because the patient had not been a resident of the County for a year as required under the statute for nonemergency indigent medical care.* (A. 10-11).

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* The statute permits care without regard to residence in "emergency" situations. Counsel for the parties in this action has stipulated that this patient was not "an emergency" and that the exception is, therefore, not applicable (A. 9).

The durational residence requirements of the statute were added by the Arizona Legislature in 1937, and a Memorial adopted by the Arizona House of Representatives at that same session reveals that this state was highly concerned about the influx of poor, chronically ill persons from midwestern states seeking Arizona's dry climate. (The Memorial is reprinted as Appendix A to this Brief). The durational residence requirements of the statute were challenged in a three-judge district court action involving a case arising in Pinal County, Arizona in *Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), and that court held this same statute unconstitutional.

This action was instituted to determine whether Maricopa County was obligated to provide care for this indigent and to reimburse Memorial for the costs that it sustained as a result of the County's refusal to accept responsibility for the indigent's care. Necessarily, this required an adjudication of the validity of the Arizona statute which exempts the County from any such obligation for persons like Mr. Evaro who have been residents for less than a year.

The trial court held the statute unconstitutional, believing itself compelled to this result by the decision of this Court in *Shapiro* v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969). The court also cited *Valenciano, supra,* and *Vaughan* v. *Bower,* 313 F. Supp. 37, *aff'd mem.,* 400 U.S. 884 (1970), a case invalidating the residence requirements of another Arizona statute for mental health care. (A. 22).

The Supreme Court of Arizona overruled the trial court, declining to follow the *Valenciano* decision. This appeal followed. (A. 33).

SUMMARY OF ARGUMENT

The question is the validity of the Arizona one-year county residence requirement for indigent health care. *Shapiro* v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), precludes the use of durational residence requirements for other forms of welfare, and we think that it applies with equal or greater force to health care. This Court, by affirming without opinion the earlier decision of a three-judge court in *Vaughan* v. *Bower,* 313 F. Supp. 37 (D. Ariz. 1970), *aff'd without opinion,* 400 U.S. 884 (1970), has very nearly so held, and every federal court which has considered the application of *Shapiro* principles to indigent health care has come to the same result; *Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), invalidating the identical statute here under discussion, is a sample of the several decisions on point.

Shapiro holds that durational residence requirements may not be applied to the public distribution of the necessities of life. This is the result of what is by now 40 years of public consideration of the question. Congress expressly disapproved durational residence requirements for health care even before it disapproved all other kinds of durational residence requirements, and well before the *Shapiro* decision; the fact that a co-equal branch of government has clearly established that this kind of discrimination is "inherently invidious" bears strongly on the question now before the Court, *Frontiero* v. *Richardson,* 93 S. Ct. 1764, 1771 (1973). The impropriety of such classification is now so well recognized throughout the United States that, at the present time, only five states attempt to apply any durational residence requirements to health care. The decision now under review is the only

adjudication in the United States which has upheld such a requirement.

The Arizona statute requiring a year's residency in a county, as well as in the state, is even stricter than the year durational residency requirements struck down in *Shapiro*. The equal protection and right to travel principles apply as well to intercounty as to interstate movement, *Dunn* v. *Blumstein,* 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972). While no federal funds are involved, this is immaterial, *Pease* v. *Hansen,* 157 Mont. 99, 483 P.2d 720 (1971), *rev'd,* 404 U.S. 70, 92 S. Ct. 318, 30 L. Ed. 2d 224 (1971).

The restriction is a penalty on the right to travel and this is all that is required to invalidate the act. *Dunn* v. *Blumstein, supra; Affeldt* v. *Whitcomb,* 319 F. Supp. 69 (N.D. Ind. 1970), *aff'd without opinion,* 405 U.S. 1034 (1972). The legislative history of the act in question shows, as do the papers already filed in this Court and the decision below, that the purpose of this statute is to keep people out of certain Arizona counties. This means necessarily that if those persons are already residents of the state, they are meant to be kept in certain other counties. By virtue of the *Shapiro* decision, such legislation can be justified only where there is a "compelling state interest." Health care is a "fundamental necessity of life," another element mentioned in *Shapiro*. While Arizona would not apply the rigor of its statute in an "emergency," this will not save the statute. Whatever an "emergency" case may be, the statute is invalid as to the remainder of the cases, and this was the conclusion in *Vaughan* v. *Bower,* 313 F. Supp. 37, 42 (D. Ariz. 1970), *aff'd without opinion,* 400 U.S. 884 (1970), a case involving practice under the mental health statute in Arizona.

We recognize the distinction between the "compelling state interest" cases such as *Shapiro* and the "rational basis" cases such as *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). The difference is that in the instant case, a residence classification impinges directly upon a constitutional right, the right to travel, and in such cases, the compelling state interest test applies. The financial benefit to taxpayers at the expense of new residents will not justify the act; the fact that one can save money by discriminating against new residents is simply not a good enough reason. *See Rivera* v. *Dunn,* 329 F. Supp. 554 (D. Conn. 1971), *aff'd without opinion,* 404 U.S. 1054 (1972), and *see Goldberg* v. *Kelly,* 397 U.S. 254, 266, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). The claimed administrative advantage is no better than that rejected in the *Shapiro* case.

Alternatively, even under conventional equal protection standards, the act is invalid. As is well established in the decisions, a residence discrimination in the administration of the necessities of life suggests no legitimate governmental purpose or interest which would meet any test, no matter how lax, under the equal protection clause. No legitimate interest exists by which Arizona can preclude a sick person in another state, or indeed in one of the eight Arizona counties with no public hospital at all, from moving for the sake of his health to a metropolis which has a public hospital. Any distinction in terms of "old" and "new" residents does indeed give rise to "grave problems under the Equal Protection Clause," *Vlandis* v. *Kline,* 49 *U.S.L.W.* 4796, 4798 n. 6 (1973). "Inhibiting migration by needy persons" is not a legitimate purpose, and this is precisely what *Shapiro* declares. 394 U.S. at 629.

ARGUMENT

"Ye shall have one manner of law, as well for the stranger, as for one of your own country: for I am the Lord your God." Leviticus 24:22.

I. SHAPIRO v. THOMPSON REQUIRES THE REVERSAL OF THE JUDGMENT BELOW; HEREIN OF THE DECISION AND ITS REGULATION TO MEDICAL CARE.

A. The Shapiro Decision.

Shapiro v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), is one of the profoundly seminal decisions of this Court. "In *Shapiro* v. *Thompson,* the Supreme Court applied the right to travel with broader scope than ever before .... Under the *Shapiro* rationale, the right to travel must be seen as insuring new residents the right to vital government benefits and privileges in the states to which they migrate."[1]

In the brief period since this decision, it has come to have almost talismanic value; with the decision of this Court behind him, an American citizen can plan to take up new residence in any part of the land, with so much protection as this institution can give from the hazards of travel and transfer.

These basic propositions emerge from *Shapiro:*

1. A state may not prohibit welfare benefits to residents of less than a year; such a discrimination against new residents is invidious and denies equal protection of the law.[2]

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[1] Comment, *Shapiro* v. *Thompson: Travel, Welfare and the Constitution,* 44 *N.Y.U. L. Rev.* 989, 1013 (1969).

[2] The Arizona statute under attack discriminates against new residents, *i.e.,* those resident within the County for less than a year. The question of the rights of transients to medical care is,

2. A one-year waiting period device is well suited to discourage the influx of poor families in need of assistance; "but the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible." 394 U.S. at 629

3. "[A] mere showing of a rational relationship between the waiting period" and legitimate state objectives is not enough to justify such a classification; a compelling governmental interest must be shown. 394 U.S. at 634.

4. The state may not condition on residence a denial of public benefits "upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life." 394 U.S. at 627.

From this nucleus, much has grown. The same principles have been applied to health care restrictions, *Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971); and hospitalization for mental health care, *Vaughan* v. *Bower,* 313 F. Supp. 37, *aff'd mem.* 400 U.S. 884 (1970); and public housing, *King* v. *New Rochelle Municipal Housing Authority,* 442 F.2d 646, *cert. denied* 404 U.S. 863 (2d Cir. 1971), and *Cole* v. *Housing Authority of City of Newport,* 435 F.2d 807 (1st Cir. 1970). Efforts to whittle away its application to welfare have been rejected, *Besaw* v. *Affleck,* 333 F.

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therefore, not necessarily within the scope of this case. It has been supposed that this Court means to make some important distinction between residents and transients in terms of the availability of public services; *Cole* v. *Housing Authority of City of Newport,* 435 F.2d 807, 811 (1st Cir. 1970). While the hospitals of Arizona, if pushed to a position, would think it equally uncivilized to let either a passerby or a legal resident suffer the misfortunes of this appellant, we approach the matter one case at a time and, as is clear in the Statement of Facts, Evaro is unquestionably a resident, though a new one.

Supp. 775 (D. R.I. 1971), *Opinion of the Justices,* 273 N.E.2d 879 (Mass. 1971); *Baxter* v. *Birkins,* 311 F. Supp. 222 (D. Colo. 1970); *Barnett* v. *Lindsay,* 319 F. Supp. 610 (D. Utah 1970); *Sheard* v. *Department of Social Welfare,* 310 F. Supp. 544 (N.D. Iowa 1969); *Rivera* v. *Dunn,* 329 F. Supp. 554 (D. Conn. 1971), *aff'd mem.,* 404 U.S. 1054 (1972). *Shapiro* has been applied in the areas of child custody, *In re Paul and Mark,* 64 Misc. 2d 382, 315 N.Y.S.2d 12 (Family Court 1970); municipal employment, *Ector* v. *City of Torrance,* 28 Cal. App. 3d 293, 104 Cal. Rptr. 594 (2d D. 1972); *York* v. *State,* 498 P.2d 644 (Hawaii 1972); *Donnelly* v. *Manchester,* 111 N.H. 50, 274 A.2d 789 (1971); *but see Krzewinski* v. *Kugler,* 338 F. Supp. 492 (D. N.J. 1972); divorce, *Wymelenberg* v. *Syman,* 328 F. Supp. 1353 (E.D. Wis. 1971); *but see Whitehead* v. *Whitehead,* 492 P.2d 939 (Hawaii 1972) and *Place* v. *Place,* 129 Vt. 326, 278 A.2d 710 (1971); speech therapy, *Sawyer* v. *Vanadzin,* 67 Misc. 2d 772, 325 N.Y.S.2d 684 (S. Ct. 1971); probation conditions, *In re Mannino,* 14 Cal. App. 3d 953, 92 Cal. Rptr. 880 (1971); and a host of voting cases typified by *Dunn* v. *Blumstein,* 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); *Affeldt* v. *Whitcomb,* 319 F. Supp. 69 (N.D. Ind. 1970), *aff'd mem.,* 405 U.S. 1034 (1972); *Hadnott* v. *Amos,* 320 F. Supp. 107 (M.D. Ala. 1970), *aff'd,* 401 U.S. 968 (1971), to name but a few.

The core question in this case is whether medical care is covered by *Shapiro.* Can a state discriminate against its recent residents by denying them the health care which it would allow to persons who have been in the state longer? Is health care on a plane with "food, shelter and other necessities of life"? It would appear

to be an odd constitutional limitation if a state cannot use residence to cause a person to suffer the pangs of hunger but can permit him to suffer the pain of wheezing and gasping for breath, as in the case of the plaintiff. Nonetheless, the precise question has not yet been answered with an opinion here. Is durational residence classification for medical care purposes an invidious discrimination?

B. The Historical Development of the Contemporary View of Residence and Its Relationship to the Necessities of Life.

Shapiro is the peak of a constitutional movement which was 40 years in the building. Ours is an immigrating, migrating country. Whatever stability may have been achieved in the 1920's, migration took a vigorous new turn with the Depression of 1929. Led in popular imagination at least by the movement of the "Okies," see J. Steinbeck, *The Grapes of Wrath,* fugitives from the agricultural depression in the Middle West and South began to move to the West Coast. The major shift of American population, sometimes caught up in the phrase the Continental Tilt, was under way. That movement intensified for reasons of job opportunities because of defense development in the western states during World War II. It has continued in varying degrees to date so that in the recent past, California at last became America's most populous state.

For example, between March, 1967, and March, 1968, 36.6 million Americans over the age of one year moved. Of that number, 23 million moved within counties, 6.6 million within the same state, and 7 million between states. In the 21 annual surveys of movement between 1948 and 1969, the total percentage of Americans moving has been essentially stable; it has not varied 3 percentage points. Mr. Evaro, in moving from one state

to another, was one of a group of more than 7 million Americans who did the same thing.[3]

The movement of people, at various times, has been both welcomed and resisted. During the Depression, the receiving states had some reluctance to allow added poor to share the general poverty, and so efforts were made to stop migrants at the border. This was precluded in the landmark decision of *Edwards* v. *California*, 314 U.S. 160, 62 S. Ct. 164, 86 L. Ed. 119 (1941).

More subtle barriers than an absolute blockage of movement were also attempted. Even after the federal government began subsidizing assistance programs in 1935, federal law allowed the continuation of strict residence requirements by states without loss of federal assistance.[4] A leading discussion concerning residency requirements came in connection with the Economic Security Act of 1935.[5] In testimony before the Senate Committee, Mr. Charles H. Houston, representing the

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[3] The data is taken from Bureau of Census, Population Characteristics, Series P-20, No. 188, Aug. 14, 1969, p. 1.

[4] Maximum residence requirements were set by the Social Security Act of 1935 for various types of assistance. One required states to provide certain types of assistance to applicants who had resided within the state five of the last nine years. Act of Aug. 14, 1935, ch. 531, § 2(b)(2), 49 Stat. 620 (1935). Another gave relief to persons who had resided therein continuously for one year immediately preceding the application. *Id.*, § 402(b)(2), at 627. Besides interstate restrictions, a number of states also adopted intrastate requirements. Most often, these restrictions were intercounty residence requirements whereby an applicant became eligible for assistance only by residing in a county for a designated length of time. See Note, *Residence Requirements in State Public Welfare Statutes-I*, 51 *Iowa L. Rev.* 1080, 1088-89 (1966). This Arizona statute has such an intercounty restriction.

[5] *Hearings on S. 1130 Before the Comm. on Finance*, 74th Cong., 1st Sess. (1935).

National Association for the Advancement of Colored People, denounced as the "cruelest kind of illusion" any plan under which a state might "dangle in front of [the poor] an old-age-assistance provision, and then say they have to starve in one state" for a certain amount of time before they can qualify for it.[6] Mr. Houston, the first person we have found attacking all state residence limitations of essential care, said: "If you have to have any residence requirement whatsoever, it would be sufficient to establish a national residence requirement."[7]

Dr. Ellen Potter, representing the National Committee on the Care of Transient and Homeless, addressed herself to the "legal responsibility for the care of this army of wanderers" and spoke of the development of a program for the care of transients (defined as anyone who has been in the state for less than one year). The plan at that time contemplated "under the federal regulations: shelter, food, clothing, medical and health service (excluding hospitalization)." Her testimony was the first we have found fully to recognize that problems of short-term residents "could not be adequately handled by private agencies, operating community by community."[8] A House hearing at the same time[9] heard testimony from Mr. Ralph Whitehead, representing the American Federation of Actors, to the effect that no residence requirement longer than that required for voting should be permitted.[10] The first

[6] *Id.* at 643.

[7] *Id.*

[8] *Id.* at 522-31.

[9] *Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. (1935).

[10] *Id.* at 831-32.

actual legislation appears to have been a special amendment to the original act of the Emergency Relief Administration.[11]

The interrelation of medical with all other types of essential care was recognized from the beginning; in January, 1935, the Committee on Care of Transient and Homeless, responding to a request from Louis Howe on behalf of President Roosevelt, submitted a report on the problems of this group and said: "It is now known that a considerable number of the transient group require institutional, custodial, or specialized medical care of various kinds." [12]

The idea gained adherents and scope with a rising awareness of facts, and a small group notion in the 1930's became official policy in the 1940's. In 1945, Mr. Arthur J. Altmeyer, Chairman of the Social Security Board, called on Congress for the total abolition of residence requirements as a condition of public assistance. He thought this imperative to protect free travel. Inevitably, he said "a substantial number of migrants should need public assistance before they could become self-supporting." Reviewing the population movement, he found that it had "changed its character with the beginning of the defense construction boom." Between 1941 and 1945, he told Congress, 15 million Americans moved, and 6 percent of the entire population moved to a different state. He added:

> "All proposals retaining residence requirements in public assistance are inconsistent with the goal

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[11] Act of May 12, 1933, ch. 30, 48 Stat. 55. Congress, in a special amendment to the original act of the Emergency Relief Administration, designated the care of the transient poor as a special federal responsibility. *Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. at 537-38 (1935).

[12] *Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. 539 (1935).

> of providing aid to all needy people. These requirements are time consuming to apply and cause delay in making aid available. They are wasteful and administratively cumbersome. While every reduction in these requirements qualifies some people who otherwise would not be eligible, some needy people still continue to be barred. The only way to qualify all otherwise eligible needy people is to abolish all residence requirements completely." [13]

Mr. Altmeyer stressed that a healthy economy required a mobile economy. He relied on the recommendation of the Council of State Governments that residence requirements were a "handicap to the prosecution of the war." [14]

Throughout the 1950's and '60's, the National Travelers Aid Association took the lead in the effort to eliminate residence requirements. The heart of the argument was the necessity of mobility for the American people; in the view of National Travelers Aid, "people must be free to move where their labor is needed." [15] Recognizing that states "with attractive year round climates" have been especially concerned about the possible influx of persons wishing to move there, a Commissioner of Welfare in 1963 nonetheless called for a total abolition of residence requirements.[16] The National Social Welfare Assembly published a statement entitled "Mobility and Progress," applying the principles of *Edwards* v. *California, supra,* and

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[13] Altmeyer, *People on the Move, Effect of Residence Requirements for Public Assistance, Soc. Sec. Bull.* 2 (1946).

[14] *Id.* at 5 n.7.

[15] National Travelers Aid, *National Social Welfare Assembly Residents Roundup* 1, Apr., 1961.

[16] Address by Ellen Winston, Commissioner of Welfare, HEW, to Travelers Aid, May 23, 1963, in HEW collection.

called for "no exclusion" of any person from welfare programs because of residence.[17] As Travelers Aid has said, people did have to be free to move where their labor was needed.[18]

In this same spirit the 51st Governor's Conference in August, 1959, recommended a system of interstate compacts whereby no citizen would be handicapped because of residence.[19] The Advisory Council on Public Assistance, HEW, in 1959 called for the abolition of all residence requirements in all state programs to aid "free movement of people,"[20] and The White House Conference on Children and Youth in 1960 recommended that "residence requirements for public welfare service should be eliminated."[21] So did The White House Conference on Aging, and the 1960 Democratic platform recommended that all federal aid should be "without regard to residence." In 1961 Senator Humphrey contended that the whole idea of residence requirements for these purposes "seems ridiculous and even downright unAmerican to me."[22]

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[17] National Social Welfare Assembly, *A Position Statement Entitled "Mobility and Progress"*, 3 (1962).

[18] National Travelers Aid, n.15 *supra*.

[19] *Id.*

[20] *Id.* at 5.

[21] *Id.* at 7.

[22] *Id.* at 9. Groups opposing residence requirements in approximately 1960 included the National Council of the Churches of Christ, the National Federation of Settlements and Neighborhood Centers, the Community Funds and Councils of America, the Council of Jewish Federations and Welfare Funds, and many others. See *Statement of the Council of Jewish Federations and Welfare Funds, Inc.*, June 10, 1957; *Statement of Principles on Residence Laws* by the National Travelers Aid Association, Mar. 23, 1956.

Medical care was the most urgent need; as was said at the time, "in most places in this nation, a community will demand that medical care be given even if not food and shelter." [23] The almost total abolition of residence requirements for medical care began even before the decision of this Court in *Shapiro*. The Kerr-Mills Act of 1960 [24] provided that there might not be any exclusion, in giving medical care to the aged, of "any individual who resides in the state." This was in accord with the recommendations of HEW in President Eisenhower's administration; while the bill was under consideration, Senator Humphrey had proposed that all residence requirements over one year be abolished and that the federal government bear the costs for the one year. HEW opposed this proposal, believing instead that this problem "should be resolved within the framework of the present system of State Assistance programs," and it was, as has been noted, by forbidding durational residence requirements entirely in all state programs under Kerr-Mills. This provision was carried over into the Medicaid program in 1965.[25] Kerr-Mills illustrates the primacy of medical

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[23] Address by Laurin Hyde, *The Trouble With Residence Laws*, American Public Welfare Association's National Biennial Roundtable Conference, in Chicago, Dec., 1957.

[24] Act of Sept. 13, 1960, Pub. L. No. 86-778, 74 Stat. 924. For a general review of health care legislation in relation to Social Security, see Stevens & Stevens, *Medicaid: Anatomy of a Dilemma*, 35 *Law & Contemp. Prob.* 229 (1970). For an able review of residence requirements and their history as they existed up to 1958, see J. ten Broek, *The Constitution and the Right of Free Movement* (1955); and for a rewarding account, Rosenheim, *Shapiro* v. *Thompson, Supreme Court Review* 303 (1969).

[25] *Hearings on H.R. 12580 Before the Senate Finance Comm.*, 86th Cong., 2d Sess., at 506-07. 42 U.S.C. § 302(5)(2) provides that in the administration of the Medicaid program there may not

over any other kinds of welfare care, for under that statute, a residence requirement might be imposed for some other kinds of welfare but not for health care. The 1960 policy as established in the Senate Committee report was that "in order to meet the practicalities of providing an effective medical program for this low income group, a state should not be permitted to have as an eligibility requirement a durational residence requirement which excludes any individual who resides in the state." [26] There might be residence requirements for other purposes, but not for medical purposes.[27] Even after the 1965 amendments, the Social Security Act continued to permit year residence limitations for Aid to Dependent Children,[28] limitations which this Court invalidated in *Shapiro*. As a further illustration of the primacy of indigent medical care, the Hill-Burton program for hospital construction requires that state plans for hospitals provide, without regard to duration of residence, "for all persons residing in the

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be "any residence requirement which excludes any individual who resides in the State." As the legislative history shows, the provision was intended to "assure comparable treatment for all of the needy aided under the federally aided categories of assistance." *United States Code Congressional and Administrative News*, at 1943, 2017 (1965). This provision came from the Kerr-Mills Act of 1960. Act of Sept. 13, 1960, Pub. L. No. 86-778, § 601(b)(2), 74 Stat. 924.

[26] *United States Code Congressional and Administrative News*, at 3715-16 (1965).

[27] Kerr-Mills provided that for old age assistance a state could require residence of five of the nine years immediately preceding the allowance, but that the state might not "in the case of applicants for medical assistance for the aged, exclude [any individual who resides in the State]."

[28] 42 U.S.C. § 602(b)(2).

state" and "furnish needed services for persons unable to pay therefor." 42 U.S.C. § 291c(e).[29]

Since 1960, residence requirements have been on the retreat. In 1961, Congress gave extensive attention to the care of true transients, the domestic agricultural migrants; see 42 U.S.C. § 242(h)(10). It considered the hazards to the whole community of health neglected; epidemics, as for example diptheria, began with migrant families and spread into the whole population. Preventive care was far more effective than trying to stop an epidemic once it had started, and Congress finally concluded that there was no significant difference between truly migratory workers and seasonal workers.[30]

By 1961 the Department of Health, Education and Welfare had discovered that the states were "in too many instances" giving medical relief only "on an emergency, last resort basis." This, HEW said, results in costs which are picked up "by the paying patient and by the person or institution rendering the care."[31] Other states reported the problems which arose from the "lack of early hospitalization to those

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[29] The same section goes on to authorize issuance of regulations conditioning approval of project applications upon assurances that "(1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint." 91-771

[30] House Rep. No. 91-771, *United States Code Congressional and Administrative News* 2501 (1970).

[31] HEW, Report on Medical Resources Available to Meet the Needs of Public Assistance Recipients, 73 (1961).

in need," all of which result in spreading costs over paying patients; for when a state will not pay, then, unless persons are turned away from the hospitals to die, the other users, said HEW, "are, in effect, taxed for it and at a rather inconvenient time."[32] Hence, the Department concluded that "medical care is a basic necessity of life," and must be regarded as such for all residents.[33]

In summary, in the three decades between the Depression and the late 1960's, durational residence limitations on the necessities of life were utterly condemned. From the small voices of the 1930's to the emphatic recommendations of Republican and Democratic administrations and legislators of all shades of opinion came the conclusion that residence requirements going to the level of existence itself could not be endured. They were incompatible with American traditions of movement, discriminated unconscionably between people, and were likely to result, particularly in the medical field, in the spreading of disease and in unacceptable burdens to other patients and institutions. Most medical restrictions were knocked out by legislation in the 1960's, and this Court, translating this national policy into the constitutional doctrines of right to travel and equal protection, gave the *coup de grace* to welfare residence requirements in the *Shapiro* case.

C. The Situation Today as to Medical Care.

Shapiro did not deal in express terms with durational residence requirements as a condition of medical care, though it dealt broadly enough with the topic

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[32] *Id.* at 74.

[33] *Id.*

so that many might well suppose that medical care was covered. Medicaid, Title XIX of the Social Security Act, precluded a residence requirement for all state-adopted programs. Arizona is the only state which has not adopted Medicaid, and this contributes to its isolation on the immediate subject. Medicaid programs, however, differ among themselves, and not all state residence requirements are necessarily precluded by it since only a portion of state medical care is through Medicaid programs.

There is, so far as we know, no compilation published either by HEW or otherwise, covering the extent to which states presently seek to impose any durational residence requirements on medical care or hospitalization. Consequently we have, through the hospital association in each state, compiled a report for this Court, reproduced in Appendix B to this brief. As it shows, Medicaid eliminated most residence requirements and *Shapiro* knocked out the bulk of the rest. Decisions in some cases held that *Shapiro* applied to hospitalization; *see, e.g., Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), the conflicting decision tangentially under review here. Medical care is so obviously one of the necessities of life that most states concluded as a common sense matter and without litigation that residence requirements of this sort necessarily fell with *Shapiro.* For illustration, see the response from the State of Michigan to our inquiry:

> "The Michigan Department of Social Services advises that the Michigan statutory durational residence requirements as a condition of public payment for indigent medical care are inoperative because of the U.S. Supreme Court decision in *Shapiro* v. *Thompson* (394 U.S. 618)."

The upshot is that so nearly as we are aware, only five states do, at the present time, apply any kind of durational residence requirement as a condition on medical care. One is Arizona, where the requirement has been both invalidated and upheld, a conflict which gives rise to this appeal. The other four are Colorado, Mississippi, Nebraska and Florida.[34]

In *Shapiro,* this Court had to invalidate an act of Congress to reach its result. In the instant case, this Court is called upon to do no more than make a last application of principles which have won virtually universal acceptance. Where Congress has itself concluded that a classification is "inherently invidious," then "this conclusion of a coequal branch of Government is not without significance to the question presently under consideration." *Frontiero* v. *Richardson,* 93 S. Ct. 1764, 1771 (1973).

II. SHAPIRO v. THOMPSON REQUIRES THE REVERSAL OF THE JUDGMENT BELOW: HEREIN OF ITS APPLICATION TO THE ARIZONA STATUTE.

A. The Arizona Statute Requiring a Year's Residence in the County, as Well as the State, Is Even Stricter than the Year Durational Residence Requirements Struck Down in Shapiro.

In *Shapiro* v. *Thompson,* this Court invalidated state statutes which created "two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less

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[34] Colorado Rev. Stat. Ann. §§ 36-10-21, -22 (Supp. 1971); Mississippi Code Ann. § 43-31-19 (Supp. 1972); Nebraska Rev. Stat. §§ 68-103, -115 (Supp. 1972). A Florida statute involving one county was invalidated in *Crapps* v. *Duvall County Hosp. Authority,* 314 F. Supp. 181 (M.D. Fla. 1970). However, we are advised one-year residence requirements are unofficially imposed for county medical programs.

than a year, in the jurisdiction." *Shapiro, supra* at 627. This Arizona statute creates two such classes. The plaintiff denied County care in this case had traveled from another state. The only residency distinction between the Arizona statute and the state statutes in *Shapiro* is that the Arizona statute requires not merely state residency, but residency within the particular county as well. To this extent, the Arizona statute is even more restrictive in its classification than those invalidated by this Court in *Shapiro.*

The appellee County and the Supreme Court of Arizona below have erroneously attempted to draw some meaningful constitutional distinction between a local residence requirement and a state residence requirement. To the contrary, the right to travel and to use facilities of interstate commerce within a state is as constitutionally protected as the right to travel between states. Thus in *Dunn* v. *Blumstein,* 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972), the Court struck down in one blow both state and county residence requirements for voting as violative of the right to travel. In *United States* v. *Guest,* 383 U.S. 745, 757-59, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966), relied upon in *Shapiro, supra,* this Court took cognizance of the constitutionally protected right of all citizens to use the highways and other instrumentalities of interstate commerce within a state, as well as in traveling from state to state.

The lower courts have almost without exception recognized that the principles of *Shapiro* are applicable to movement within a state as well as to movement between states. The First Circuit Court of Appeals followed *Shapiro* to strike down a community residency requirement for public housing, *Cole* v. *Housing Authority of City of Newport,* 435 F.2d 807 (1st Cir. 1970). The Second Circuit, a year later, also struck

down a community residence requirement for public housing in *King* v. *New Rochelle Municipal Housing Authority*, 442 F.2d 646 (2d Cir. 1971), *cert. denied*, 404 U.S. 863. Judge Waterman in that case summed up the question in its constitutional framework by the following language: "It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state." *King* v. *New Rochelle Municipal Housing Authority, supra* at 648.[35]

The conclusion reached in all of these cases is inescapable, both as a matter of constitutional theory and of common sense. As this Court's opinion in *Shapiro* explains, "the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." 394 U.S. at 629. A local residence statute like Arizona's affects not only those like the appellant Evaro in this very case, who traveled

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[35] Other courts have dealt with local residence requirements in a variety of contexts and have considered the distinction between a state and local requirement as irrelevant. *Nicholls* v. *Schaffer*, 344 F. Supp. 238 (D. Conn. 1972), held that the principles of *Shapiro* applied to a six-month's town residency requirement for voting. In *Demiragh* v. *DeVos*, 337 F. Supp. 483 (D. Conn. 1972), the court struck down a local residency requirement for welfare established not by statute, but by municipal ordinance. The court described "the unquestioned right of all citizens to enter and reside in any state or town in the United States." *Id.* at 489. Any distinction between the protection accorded interstate and intrastate movement was considered irrelevant in two cases dealing with local requirements that city employees be residents of the city by which they were employed. *Donnelly* v. *Manchester*, 111 N.H. 50, 274 A.2d 789 (1971); *Krzewinski* v. *Kugler*, 338 F. Supp. 492 (D. N.J. 1972).

from one state to another, but also the 6 million Americans who each year move between counties but within the same state. It is Alice in Wonderland justice to hold, as does the court below, that while it is unconstitutional to discriminate against the 7 million Americans who move annually between states, the illegality is erased if one adds to the discrimination 6 million additional persons who only moved between counties.

The County buttresses its contention that somehow counties are different by contending that *Shapiro* applies only where federal funds are involved, as they are not here. *Pease* v. *Hansen,* 157 Mont. 99, 483 P.2d 720 (1971), *rev'd,* 404 U.S. 70, 92 S. Ct. 318, 30 L. Ed. 2d 224 (1971), settled this question to the contrary of the County's position. There the Montana court had held that *Shapiro* did not apply to a durational residence requirement for general assistance funded solely by the county. This Court reversed in a per curiam opinion holding that whether a welfare program is or is not federally funded is irrelevant to the applicability of *Shapiro* principles.[36]

B. The Arizona Residence Requirement for Medical Care Penalizes the Exercise of the Right To Travel.

We cannot prove that the Arizona residence requirement keeps people out. The Bureau of the Census has reported that the population shift from 1950 to 1960 showed Arizona to be one of five states with increases of more than 20 percent. It has long been recognized that some people come to this benign land for their health;

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[36] *Graham* v. *Richardson,* 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971) held that denial of welfare benefits to aliens was constitutionally impermissible. In that case the benefits provided by one state were federally assisted, and the program of the other state was state funded. This Court treated the two programs as indistinguishable for the purposes of its decision.

thus, "Florida, New Mexico, and Arizona show registration high in proportion to their population, probably due to climatic conditions and the search for health." [37] Ponce de Leon is not the last to have come to one of the kindly climates of America for his health, and undoubtedly this draws American citizens to travel and to become residents of Arizona. This is their right. There is no hard estimate of how many more would have come to a more hospitable reception.

We can prove that the object of this restriction is to exclude people. The legislative history of this statute shows, and the County's Motion to Affirm in this Court concedes in effect, that the statute acts as a barrier to keep out indigents who are ill, and who wish to reside in Arizona, and specifically in Maricopa County.

Maricopa County is the county in which Phoenix and surrounding communities are located. It is the largest metropolitan area in the mountainous and desert terrain of the southwestern region of this country, a region encompassing not only Arizona, but the states bordering to the north and east. The County's Motion to Affirm expressly looks to the danger that should this statute be invalidated, Maricopa County would be "flooded" by indigents from other and poorer counties in the state, and in the long run from the entire country.

The Arizona Legislature passed a Memorial during the same session in which it established these residence restrictions. That Memorial (Appendix A to this brief) demonstrates that Arizona has long been a state to which those with chronic respiratory and other ailments look for healthier climes in which to find gainful employment. It was there estimated that of Arizona's

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[37] *Hearings on S. 1130 Before the Comm. on Finance*, 74th Cong., 1st Sess. 526 (1935), referring to emergency relief registration.

indigent sick, 86 percent were recent arrivals. The Memorial called on Congress to deal with "these visitors" who were "in such poor circumstances" because it was "not just" to dump this "burden" on Arizona. The accompanying state legislation shows that the purpose of the County's approach was to insulate the rural counties and stick Maricopa County, which, as a legislator said, "is so unfortunate as to receive most of the indigent sick of the state."[38]

The constitutional right to travel is firmly established, whatever clause of the Constitution is its foundation, *United States* v. *Guest,* 383 U.S. 745, 756, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966); Note, *Travel, Wel-*

[38] The available legislative history shows that the major issue surrounding the bill was whether counties were to be responsible for health care costs. Representatives of Maricopa, the most populous county, opposed the county approach, believing the state as a whole should bear the burden. For example, Philip A. Isley stated:

> "The members of Maricopa county, as a rule, have been willing to yield to the outside counties as per tax distribution. In our session of the thirteenth legislature we submitted to the outside counties as to distribution of sales tax, and in the twelfth regular session, I voted with the outside counties of the state for the distribution of the gasoline tax for road maintenance, as I felt that these smaller counties, without the assistance of our gasoline tax, would not be able to build trails in most instances. I voted with them because I felt that it was only fair to the state at large.
>
> "In this instance we have exactly the same condition, only reversed, and I feel that inasmuch as Maricopa county is so unfortunate as to receive most of the indigent sick of the state, it would only be fair for the smaller counties of the state to give us the same assistance in caring for the indigent sick of the state as we extended to them in the construction and maintenance of their roads." *H. R. Jour.*, 13th Ariz. Leg., 3d Spec. Sess. 262 (1937).

Likewise, Rep. W. W. Mitchell noted:

> "The care of indigent sick is a charge of the whole commonwealth and unless the state is to assist in this burden, I will be obliged to vote 'no'." *Id.* at 263.

fare and the Constitution, 44 *N.Y.U. L. Rev.* 989 (1969); and for concise cases on origin, see Comment, 86 *Harv. L. Rev.* 104, 113 n.44 (1972). We need not prove that this classification actually deters travel; it is enough that it penalizes travel, *Dunn* v. *Blumstein, supra,* 405 U.S. at 340, and for emphatic restatement that the mere existence of the penalty is enough, *see Affeldt* v. *Whitcomb,* 319 F. Supp. 69 (N.D. Ind. 1970), *aff'd,* 405 U.S. 1034 (1972). But while we need not prove actual deterrence, here, as in *Shapiro,* we show express purpose from the brief already filed by the County on the issue of probable jurisdiction:

Shapiro	*Maricopa County Brief*
"There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific objective of these provisions . . . [The validity of the Act] was frankly defended on the ground that it is designed to protect the jurisdiction from an influx of persons seeking more generous public assistance than might be available elsewhere."	"Absent such a requirement, the short-term effect would be that Arizona indigent citizens residing in counties other than Maricopa would flock to Maricopa County for a limited period of free health treatment, while the long-term effect would be that indigent persons throughout N o r t h America would be enabled to receive free medical care at the expense of Maricopa County Hospital, regardless of their place of residence, simply by stating that they have recently established residency in M a r i c o p a County. In either the long- or short-term result, Maricopa County could become flooded with people demanding free treatment for various non-emergency ailments."

Shapiro held such purposes and justifications to be "constitutionally impermissible."

C. Health Care Is as Fundamental a Necessity of Life as General Assistance Welfare Payments.

In *Shapiro,* this Court dealt with year residence requirements for public assistance payments. Such payments are made under a variety of federally and state funded programs lumped under the general label of "welfare." Publicly assisted health care is simply a part of welfare. One commentator has stated:

> "I shall ordinarily use the term 'welfare' to mean public assistance. But these so-called categorical aids do not exhaust the range of what is conveniently (though inaccurately) termed the welfare 'system.' At a minimum, that phrase connotes a heterogeneous collection of social insurance and public assistance programs disbursing cash, health, and medical benefits 'in kind,' as well as such direct service programs as child welfare, vocational rehabilitation, and school meals (to cite a few examples)." Rosenheim, *Shapiro* v. *Thompson: The Beggars Are Coming to Town, Supreme Court Review* 303, 305 (1969).

As was developed in Part I of this Argument, historically, medical care has been regarded as even *more* fundamental than the rest of welfare. It is not surprising that all the decisions on residence requirements for health care have, with the single exception of the opinion below, struck down such requirements as violative of the principles enunciated in *Shapiro. Vaughan* v. *Bower, supra; Crapps* v. *Duvall County Hosp. Authority,* 314 F. Supp. 181 (M.D. Fla. 1970); *Valenciano* v. *Bateman, supra; Arnold* v. *Halifax Hosp. Dist.,* 314 F. Supp. 277 (M.D. Fla. 1970).

The court in *Valenciano* v. *Bateman, supra,* at 603, considered the very Arizona statute at issue here, and concluded as follows:

> "The effect of A.R.S. 11-297 is to create two classes of indigent persons in need of hospital or

> medical care indistinguishable except on the basis of the length of their residence in a particular county. A statutory scheme which requires a county official to withhold such fundamental public benefits to residents of that county on the basis of whether or not they have resided therein for the duration of one year constitutes an 'invidious classification.' ... [W]e hold that hospitalization and medical care for indigents are benefits essential to the preservation of their life and health in the context of the holding of *Shapiro, supra.*"

Since *Shapiro,* lower courts have considered its applicability to residence requirements imposed not merely on public assistance, health care and other welfare related programs, but to a wide spectrum of benefits. This Court has affirmed the application of *Shapiro* principles to health care in a case striking down a statute conditioning mental patient care upon a year's Arizona residence. *Vaughan* v. *Bower, supra.* With due consideration of nonemergency care under the instant statute, which it recognized to be even more essential than the mental health care in *Vaughan,* the Court concluded that the one-year requirement could not stand.

It is also significant that courts which have refused to expand *Shapiro* principles to other areas of government service have impliedly recognized that *Shapiro* applies where residence classifications deny medical care. Thus, in *Kirk* v. *Board of Regents of Univ. of Cal.,* 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969), *appeal dismissed,* 396 U.S. 554 (upholding residence requirements for lower tuition at state universities) the court expressly recognized that under *Shapiro,* durational residence requirements were impermissible

for benefits necessary to "the preservation of life and health":

> "While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. *Shapiro* involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirements for attendance at publicly financed institutions of higher learning do not involve similar risks. Nor was petitioner (unlike the families in *Shapiro*) precluded from the benefit of obtaining higher education. Charging higher tuition fees to nonresident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents." 78 Cal. Rptr. at 267.

The language just quoted was cited with approval in *Starns* v. *Malkerson,* 326 F. Supp. 234, 238 (D. Minn. 1970), *aff'd,* 401 U.S. 985 (1970), also dealing with durational residence requirements for tuition.[39] These courts have recognized that *Shapiro* must be applied to benefits directly related to the preservation of life and health. Surely nothing is related so directly as medical and hospital care.

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[39] For other cases involving residence classifications for tuition, see *Arizona Bd. of Regents* v. *Harper,* 108 Ariz. 223, 495 P.2d 453 (1972); *Thompson* v. *Board of Regents of the Univ. of Neb.,* 187 Neb. 252, 188 N.W.2d 840 (1971); *Fox* v. *Trustees of Consol. Univ.,* 16 N.C. App. 53, 190 S.E.2d 884 (1972); *Glusman* v. *Trustees of the Univ. of N.C.,* 281 N.C. 629, 190 S.E.2d 213 (1972), *appeal docketed,* 41 *U.S.L.W.* 3351 (U.S. Oct. 25, 1972) (No. 72-635).

III. NO COMPELLING GOVERNMENTAL INTEREST SUSTAINS THE ARIZONA STATUTE.

A. Where a Durational Residence Classification Penalizes the Exercise of the Right To Travel, the Classification Can Be Sustained Only by a Compelling Governmental Interest.

The appropriate equal protection standard to be applied in this case was laid down in *Shapiro*. A waiting period provision which denies fundamental benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction penalizes the exercise of a constitutional right to travel. Therefore, "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Shapiro, supra,* at 634.

Application of the compelling interest standard flows inescapably from the two most obvious facets of this statute with which we have already dealt at length. First, this statute, like the statutes in *Shapiro,* creates classifications based solely on length of residence. This durational residence classification, like that in *Shapiro,* serves to deny benefits to those otherwise eligible solely because they have recently exercised their constitutional right to travel by moving into the jurisdiction.

Second, this case involves not merely a residence classification, but one conditioning care fundamentally necessary to the preservation of life and health.

We recognize that this Court in *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed 2d 491 (1970) applied a different standard in dealing with restrictions on welfare benefits. The Court there sustained a state-imposed ceiling on the amount any family could receive under a welfare program. The Court

held that the $250 ceiling on the amount of Aid for Dependent Children grants bore a reasonable relationship to legitimate state interests in economy, encouraging employment and avoiding discrimination between welfare families and families of the working poor. But *Dandridge* involved a ceiling applied to all families across the board. There was no durational residence requirement and no resultant invidious discrimination impinging upon the right to travel. The Court's opinion in *Dandridge* expressly noted, in applying traditional standards of equal protection, "[i]t is enough that the State's action be rationally based and *free from invidious discrimination.* The regulation before us meets that test." 397 U.S. at 487 (emphasis added). The statute in this case does not.

In this Court's subsequent opinion in *Graham* v. *Richardson,* 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971) the Court reiterated the reason for the application of the compelling interest standard in *Shapiro:* "It is enough to say that the classification involved in *Shapiro* was subjected to strict scrutiny under the compelling state interest test, not because it was based on any suspect criterion such as race, nationality, or alienage, but because it impinged upon the fundamental right of interstate movement." 403 U.S. at 375. The Court, speaking through Justice Blackmun, went on to distinguish *Dandridge:* "Appellants' attempted reliance on *Dandridge* v. *Williams,* 397 U.S. 471, (1970), is also misplaced, since the classification involved in that case (family size) neither impinged upon a fundamental constitutional right nor employed an inherently suspect criterion." 403 U.S. at 376.

The compelling state interest test applies where the right is "fundamental," the discrimination "invidi-

ous." Under *Shapiro* and all subsequent cases, the right to travel is fundamental and a residence discrimination is invidious.

B. Financial Protection to Taxpayers, at the Expense of New Residents, Nonpublic Hospitals, and Other Patients, Is Not a Compelling Justification.

The principal justification offered by Maricopa County for this statute is that elimination of the residency requirement would be costly. The County estimates that for the first year of abolition (and significantly the only figures offered are for the first year) the number of in-patient days hospitalization for indigent new residents would be 20,000 at an estimated total cost of $1,500,000. The estimated number of out-patient clinic visits for indigent new residents would be 17,500, at a cost of $350,000 (A. 13, 14). The County estimates that the elimination of residence requirements would require for the first year an increased budget expenditure of approximately 3.27 percent (A. 21).

The County's own figures, rough estimates though they may be, illustrate vividly our own position: that the need for medical care is large and a system which denies needed medical care to so many for the sole reason that they have recently moved to the jurisdiction works an invidious discrimination.

As *Shapiro* establishes, the mere saving of costs cannot justify an otherwise invidious classification; and see for the proposition that dollars "are not overriding in the welfare context," *Goldberg* v. *Kelly,* 397 U.S. 254, 266, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). While fiscal considerations are legitimate interests of government, they cannot constitute a compelling state interest justifying denial of such urgently needed benefits solely

on the basis of residence. This principle has been applied even where the governmental entity has pleaded that its own finances were in a state of dire emergency. See *Rivera* v. *Dunn*, 329 F. Supp. 554 (D. Conn. 1971), *aff'd mem.*, 404 U.S. 1054 (1972):

> "The Supreme Court, however, has made it quite clear that conservation of the public fisc is not a sufficient ground to authorize a residence statute which also has the effect of limiting the right of certain citizens to travel freely throughout the United States." 329 F. Supp. at 558.

See also In re Smith, 323 F. Supp. 1082, 1088 (D. Colo. 1971); *In re Naron*, 334 F. Supp. 1150, 1141 (D. Ore. 1971), both involving filing fees for bankruptcies; *Friedler* v. *University of State of New York*, 70 Misc. 2d 446, 333 N.Y.S.2d 928 (S. Ct. 1972), involving impermissible denials of "scholarship incentives" to aliens.

Here we have the assertion of economic considerations in the purest form. There is no grave emergency facing Maricopa County; it is not argued that the tax rate could not be raised on a county level; if, as it appears, the concern is that there is too great a burden in Maricopa County as opposed to the rest of the state, then the burden could be shared on a wider tax base. In this regard, the legislative history of this statute shows that the statute was originally enacted over the protests of Maricopa County representatives who urged that the burden of medical care should be shared by the entire state and not imposed largely upon taxpayers in Maricopa, the most populous county.[40]

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[40] See Section II, B of this brief, *supra*.

Let us look at the other side of the coin. If these burdens are not to be borne by the taxpayers, then, under the present system, who does bear them? For those newly arrived indigent residents who receive no care whatsoever, the cost is borne by their own suffering and, indirectly, by the welfare funds which must provide for their subsistence. For those, who like Mr. Evaro in this case, do receive hospital care at other than county expense, then the cost is borne by the non-public hospitals and must be passed on to the paying patients of those hospitals. As was said in a 1961 HEW Report quoted earlier, "The cost of providing this free care is in large measure passed on to paying patients. They are, in effect, taxed for it and at a rather inconvenient time." [41]

While the County is concerned about increases in its tax level due to spreading the cost of such indigent care over the tax base of the County, the fact is that the cost of health care has increased at a vastly higher rate than other costs. The result is increasing pressure on the poor and upon all patients of hospitals. The average health bill for each American was $79 in 1950 and $324 in 1970, a rise of 7.3 percent a year. During this period, the average increase in wage levels was 4.3 percent a year.[42] Throughout the 1960's, medical prices jumped almost twice as fast as prices for all consumer items [43] and the largest of

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[41] HEW, Medical Resources Available to Meet the Needs of Public Assistance Recipients, No. 1799 (Comm. Print 1961) (report submitted to Comm. on Ways and Means).

[42] Staff of House Comm. on Ways and Means, 92d Cong., 1st Sess., Report on the Basic Facts on the Health Industry 10 (Comm. Print 1971).

[43] *Id.* at 15.

the expenditures was for hospital care.[44] The County's reluctance to share some of these costs for all of its indigents, regardless of the length of their residence, and its desire to force the burden elsewhere can hardly be termed a "compelling interest."

What is more, the County has made no effort whatsoever to demonstrate any long run economic drain on its resources by abolition of its residence requirement. There may be a long run saving:

> "When asserting the interest in maintaining fiscal integrity the state should be required to show that in the long run it would be more expensive to provide hospital services to all indigents. Admittedly, initial costs would be higher because of the administrative changes and the chronic physical conditions of indigents who have gone without essential hospital care in the past. Over a lengthier time span, however, providing equal care might reduce overall state costs. Lack of hospital care may cause the patient's condition to deteriorate to a point where emergency hospitalization is required. Not only may more and longer hospital care be required, but the indigent's family may become a burden on the state's welfare rolls for the duration of his illness or permanently if his capacity to work is impaired.[45]

C. There Are No Compelling Administrative Advantages to the County Applying a Residence Requirement.

The County and the court below have also urged that a year waiting requirement facilitates planning for the demands which will be placed on medical facilities. The

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[44] *Id.* at 20.

[45] Comment, *Indigents, Hospital Admissions and Equal Protection*, 5 *U. Mich. J.L.*, 502, 515-16 (1972).

record in this case reveals no evidence whatsoever that the County does in fact use the year waiting period for the purposes of planning for the following year's needs. There are no statistics offered on the number of people arriving each year. There is no indication that new residents are required to report to County medical authorities when they arrive in the state for record keeping purposes. The County's estimates of the increased demand upon hospital facilities which would result from abolition of this requirement are based not on any studies of migration into the state but solely upon projections of the current useage of County medical facilities. The situation is precisely the same as that in *Shapiro,* where this Court rejected the argument that residence requirements facilitate budget planning:

> "The argument that the waiting-period requirement facilitates budget predictability is wholly unfounded. The records in all three cases are utterly devoid of evidence that either State or the District of Columbia in fact uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year. None of the appellants takes a census of new residents or collects any other data that would reveal the number of newcomers in the State less than a year. Nor are new residents required to give advance notice of their need for welfare assistance. Thus, the welfare authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance. In these circumstances, there is simply no basis for the claim that the one-year waiting requirement serves the purpose of making the welfare budget more predictable." 394 U.S. at 634-35.

The claimed planning necessity is illusory, not only because the record fails to show that the County has engaged in such planning, but also because the so-called "emergency" exemption from the waiting period makes planning based upon the year waiting period impracticable even under the existing system. In any event, such purely administrative interests are not overriding or compelling. *Goldberg* v. *Kelly, supra,* at 266.[46]

Nor can the County justify an interest, much less a compelling interest, in avoiding fraud by those who are not bona fide residents. As this Court pointed out in *Dunn* v. *Blumstein,* 405 U.S. at 346-47, the nonresident intent on committing fraud can as quickly and effectively swear that he has been a resident for the requisite period of time as he can swear that he is simply a resident. This Court has also rejected the County's argument that the residence requirement is permissible as an administratively conclusive presumption that recent arrivals are not residents. See *Dunn* v. *Blumstein, supra,* at 349-50. See also *Vlandis* v. *Kline,* 41 *U.S.L.W.* 4796 (June 12, 1973) invalidating an irrebuttable presumption of nonresidence.

D. The Emergency Exemption Does Not Save the Statute.

The Arizona statute denies all publicly assisted health care to new resident indigents "except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb." The suggestion is made by the County that this exemp-

[46] The residence requirement may well add to administrative burdens in that verifying residence costs time and money. See Address of Ellen Winston, Commissioner of Welfare, HEW, to Travelers Aid, May 23, 1963, p. 14, urging that modification of residence requirements would lead to administrative savings; and see the statement of Arthur Altmeyer in Part I of this brief.

tion somehow removes the statute from the scope of *Shapiro*. We cannot agree.

The fact that the County might have done worse does not mean that it may not be required to do better; the emergency clause may improve the humanity of the statute without redeeming its unconstitutionality. Just as a given penalty may be a cruel and unusual punishment without going to the final stage of barbarity,[47] so that a denial of equal protection might be worse is no automatic vindication of the discrimination actually done.

The emergency exception in many respects makes a bad matter worse. The concept can range from the cut on the hand or the speck in the eye which any hospital "emergency room" will treat, all the way to a condition of imminent death; "immediate" care "necessary for the preservation of life or limb" is the Arizona definition, A.R.S. § 11-297A. A study of the application of an emergency qualification to care rendered by California counties showed wild diversity of treatment. One county construed the term broadly to cover any care necessary "to prevent future illness or disability"; as a practical matter 13 counties gave no hospital service; nine others gave service "in urgent cases during investigation and establishment of legal residence"; another took care "only of tuberculosis and obstetrical cases." Other counties construed the term to mean that they would care only for those who were "physically unable to return to their legal residence."[48]

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[47] See discussion in *Trop* v. *Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958); *Weems* v. *United States*, 217 U.S. 349, 371, 30 S. Ct. 544, 54 L. Ed. 793 (1910).

[48] See M. Greenfield, *County Residence Rules as a Deterrent to Medical Care of Migratory Workers*, Institute of Governmental Studies, Univ. of Calif., Berkeley (1964).

One may suspect that the range for arbitrariness here is as great as that precluded as to the committee system in the abortion cases, *Doe* v. *Bolton*, 93 S. Ct. 739, 750 (1973). This is all the more true because, even from the monetary standpoint, care delayed is cost increased and preventive medicine is the best economy. There are repeated illustrations from various states of the proposition that "lack of early hospitalization to those unable to pay has been an economic liability to the individual, to the hospital, to the county and the community . . . ."[49]

But, lest it be said that the use of this empty and economically self-defeating term is within the fair exercise of the states' discretion, let us restate the issue giving every benefit to the state. Let us assume that for this purpose the state is willing to care for new residents who are about to die and for them only. We must assume that the state would also give care to its old residents facing less immediate disaster, but that it desires to deny the same right to the newcomers. We say that as between old residents and new residents the state may not provide that the old resident may have care if he is suffering from serious bronchitis, but that the new resident must wait until pneumonia sets in; that a serious wound will be treated for the old resident but that the new resident must wait for gangrene. In this very case, the state holds that an indigent new resident admittedly requiring hospitalization in order to regain normal breathing powers and function in the community was not deserving of treatment on an emergency basis because, although gasp-

[49] See Report, "Medical Resources Available to Meet the Needs of Public Assistance Recipients" submitted to the House of Representatives, Committee on Ways and Means by the Dept. of HEW, Report 1799, 86th Cong., 1961.

ing, he was not in immediate danger of stopping breathing altogether.

For the reasons previously argued, we contend that the denial of the same health care to new residents as is given to old residents violates the Constitution of the United States. The situation is not significantly altered because the state sees fit to discriminate against most but not quite all of the new residents. A discrimination is invidious if it goes to health; it need not directly menace life. In any case the proof by now is overwhelming that the failure to attend to health needs early, even though the patient in the short term survives, is merely death deferred. A major deficiency in health services in America is that those who can afford it receive health care when they need it and so do not reach the extremes which lead to shorter life spans for the less fortunate.[50] The inability to get early care accounts for the differences in illness among American income groups; the more prosperous die of heart disease and cancer, the poor of the illnesses readily neglected such as influenza, pneumonia, congenital malformations, gastroenteritis and colitis,[51] and new residents from rural areas die

[50] For two of the many discussions of the differences of health and of life spans of the various economic strata of society, see HEW, Delivery of Health Services for the Poor (1967); HEW, White Paper: "Toward a Comprehensive Health Policy for the 1970's" at 2 (1971), with its documentation that economic aspects of life result in "the denial to some of a life span as long and as relatively free of disabilities and illnesses as that which others enjoy." The White Paper defines as "part of the Health Care Crisis" the "large disparities in the geographic location of resources," p. 9. This is particularly true in Arizona, America's fifth largest state geographically.

[51] HEW, Human Investment Programs: Delivery of Health Services for the Poor 22 (1967).

of illnesses they carry with them.[52] A statute of this kind does not create this problem, but it does compound it.

This Court has already passed on the emergency argument made here. The Arizona mental health care program, not by statute but by practice, had operated with the same concept of "emergency" exceptions. The state, seeking to defend that statute, made the same argument from the emergency practice as was offered below. A three-judge court rejected the argument, *Vaughan* v. *Bower,* 313 F. Supp. 37, 42 (D. Ariz. 1970), and see particularly n.5; this Court affirmed without opinion, 400 U.S. 884 (1970).

IV. ALTERNATIVELY, EVEN UNDER CONVENTIONAL EQUAL PROTECTION STANDARDS, THE ACT IS INVALID.

In the preceding portion of the Argument, we have, we trust, demonstrated that under the compelling state interest test, the legislation is invalid. The court below found the case controlled instead by *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970) and, applying a "reasonable basis" test, upheld the statute. While we urge that this durational residence restriction impedes the right to travel and is under the *Shapiro* rather than the *Dandridge* line of cases, we here suggest alternatively that even under the lesser standard of *Dandridge,* this act cannot stand.

> "Under 'traditional' equal protection analysis, a legislative classification must be sustained unless it is 'patently arbitrary' and bears no rational

[52] Report, President's National Advisory Commission on Rural Poverty, 12 (1967).

relationship to a legitimate governmental interest. See *Jefferson* v. *Hackney,* 406 U.S. 535, 546 (1972); *Richardson* v. *Belcher,* 404 U.S. 78, 81 (1971); *Flemming* v. *Nestor,* 363 U.S. 603, 611 (1960); *McGowan* v. *Maryland,* 366 U.S. 420, 426 (1961); *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970)." *Frontiero* v. *Richardson, supra,* 93 S. Ct. at 1768.

While the test is not difficult to pass, nonetheless the statute must be rationally related to a legitimate governmental goal. Granting that the Court will stretch to find a permissible purpose, *see e.g., Goesaert* v. *Cleary,* 335 U.S. 464, 69 S. Ct. 198, 93 L. Ed. 163 (1948); *Kotch* v. *Board of River Port Pilot Comm'rs,* 330 U.S. 552, 67 S. Ct. 910, 91 L. Ed. 1093 (1947), a merely promiscuous discrimination against all members of a class does not rescue legislation if the purpose itself is irrational; "judicial inquiry under the Equal Protection Clause, therefore, does not end with a showing of equal application among the members of the class defined by the legislation," *McLaughlin* v. *Florida,* 379 U.S. 184, 191, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964). There must be some sensible connection between a permissible result and the means chosen to achieve it, see *Levy* v. *Louisiana,* 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968), *rehearing denied,* 393 U.S. 898 (1968). If the statute is "palpably arbitrary" it is invalid, *International Harvester Co. of America* v. *Missouri,* 234 U.S. 199, 215, 34 S. Ct. 859, 58 L. Ed. 1276 (1914). For discussion of the "palpably arbitrary" standard and its application in recent decisions of this Court, *see* Tigar, *The Supreme Court, 1969* Term, 84 *Harv. L. Rev.* 1, 62-63 (1970).

Here the statute will not withstand even perfunctory judicial scrutiny. The court below, in reaching for

some legitimate purpose, frankly recognizes that the purpose of this statute is to prevent people in other parts of the state from moving to Maricopa County for health care. The Arizona court suggests that the County hospital might be swamped if "any indigent sick person of the state" could get in. We deal, of course, solely with residents and not with transients, so that the fear is somewhat overblown and the court below itself accurately says that it is "perhaps over extended."[53] Yet if residents of Arizona, not more than a quarter of whom live now outside the two metropolitan counties of Maricopa (Phoenix) and Pima (Tucson) are so desperately in need of medical care that they are willing to pull up their residence and move to one of the more populous counties, then this privilege of movement is one they ought to have; their desperation is an inevitable by-product of the circumstance that hospitals are concentrated geographically.[54] Arizona cannot be permitted to compel a person who becomes ill in a rural county to die there in poverty by putting up a fence around the counties which happen

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[53] *Cf. Doe* v. *Bolton*, 93 S. Ct. 739, 751-52 (1973), the Georgia abortion case, which notes that the statute "is not based on any policy of preserving state-supported facilities for Georgia residents," and that a State cannot "limit to its own residents the general medical care available within its borders." Here we deal not with residence, but its duration.

[54] On the maldistribution of hospitals geographically discussed as one of the key medical problems of the country, see HEW, White Paper, Towards a Comprehensive Health Policy for the 1970's (1971). As an extreme illustration, "although North Dakota has more hospital beds per capita than any other State, it averages less than 0.8 hospitals for 1,000 square miles." Staff of the House Comm. on Ways and Means, 92d Cong., 1st Sess., Report on Basic Facts on the Health Industry 48 (Comm. Print 1971).

to be rich enough to have hospitals.[55] The irrationality of the entire argument is heightened in a case which, as here, involves purely interstate movement and obviously good-faith residence.

This Court recently upheld the Texas school financing system, recognizing the right of a state "to draw reasonable distinctions between political subdivisions within its borders," *San Antonio Independent School Dist.* v. *Rodriguez,* 93 S. Ct. 1278, at 1294 n.66 (1973); but in the Texas case no law barred a resident from moving from one part of Texas to another, and this Court carefully emphasized in the very same case that no restriction on the right to travel was involved, see 93 S. Ct. at 1296 n.71 and accompanying text. In the instant case, there is no purpose even imagined by the state court except that of fencing the rural poor out of a metropolitan county. This is not "a legitimate state purpose or interest." *Id.* at 1308.

One must grasp at straws even to suggest a legitimate purpose here. In *Dandridge,* this Court sustained a regulation which had a legitimate purpose in the encouragement of employment through keying welfare benefits to the minimum wage. No such legitimate purpose is even claimed in this case. Indeed, by denying all health care to an indigent until he is at death's door, the statute discourages employment. In *Roe* v. *Wade,* 93 S. Ct. 705, 731 (1973), the Court recognized that a state has an "important and legitimate interest" in preserving and protecting the health of pregnant women who come to the state, regardless of

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[55] Greenlee County has only a mining company proprietary hospital, and Graham County has a 28-bed former hotel (Safford Inn Hospital).

their residence. Such interest is frustrated, not furthered, by the Arizona statute.

If we ask, as *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 92 S. Ct. 1400, 1405, 31 L. Ed. 2d 768 (1972) tells us we must, "What legitimate state interest does the classification promote?", the answer is nothing. Eight Arizona counties have no county hospitals at all; indigent care can only exist on a contract basis which varies from county to county. No conceivable state of facts, *McGowan* v. *Maryland*, 366 U.S. 420, 426-27, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), can justify as a "legitimate state interest" a rule that a sick person in any part of this land cannot move to a metropolis which has a public hospital for the sake of his health. Any distinction in terms of "old" and "new" residents does indeed give rise to "grave problems under the Equal Protection Clause," *Vlandis* v. *Kline*, 41 *U.S.L.W.* 4796, 4798 n.6 (1973). "Inhibiting migration by needy persons" is precisely what *Shapiro*, 394 U.S. at 629, declares not to be a permissible purpose. It is not permissible "nothwithstanding how compelling the state interest may be," *Vaughan* v. *Bower*, 313 F. Supp. 37, 42 (D. Ariz. 1970), *aff'd*, 400 U.S. 884. Once again, *Shapiro* gives the answer: "Even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional," 394 U.S. at 638; and see as further emphatic illustration that residence is not a basis of "rational relationship" in a public service area, *Cole* v. *Housing Authority of City of Newport*, 435 F.2d 807, 813 (1st Cir. 1970).

CONCLUSION

The decision of the court below is the last spasm of a dying notion that the health and welfare of American citizens can be conditioned on their residence. Every American has a right to travel freely throughout this country. There can be no seniority system by which a State may discriminate between residents who came early and those who came late.

The decision of the court below should be reversed.

Respectfully submitted,

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July, 1973.

APPENDIX A

"HOUSE MEMORIAL NO. 2

REQUESTING FEDERAL COOPERATION IN CARING FOR THE INDIGENT SICK.

To the Congress of the United States:

Your memorialist respectfully represents:

The therapeutic value of Arizona's pure, healthful air and dry climate, in the treatment of such ailments as arthritis, neuritis, asthma, bronchitis, sinusitis, and tuberculosis, is well known. This fame brings to Arizona many persons seeking health, particularly tuberculars.

Of these visitors an exceedingly large number are in such poor circumstances that if not immediately they soon become charges upon public charity. Since the dust storms of the middle western states have grown to the proportions they have in frequency and severity there has been an exceedingly large influx of destitute sufferers from ailments of the classes above mentioned. It is estimated that of Arizona's indigent sick eighty-six per cent are properly classifiable as transients.

Not to care for these people is of course unthinkable. The commonest dictates of humanity require that they be given medical aid. It is not just, however, that the burden should fall wholly upon Arizona. In some measure the responsibility is national in character.

Wherefore your memorialist, the House of Representatives of the State of Arizona, requests:

1. That the Social Security Act be so amended as to extend its provisions for federal cooperation in the care of needy citizens over the class known as the indigent sick.

Adopted by the House August 2, 1937.

Filed with the Secretary of State August 2, 1937."

Acts, Resolutions and Memorials of the 13th Ariz. Leg., 3d Spec. Sess. (1937).

APPENDIX B

State Application of Durational Residency Requirements

We are unaware of any report published either by HEW or otherwise covering the extent to which states presently seek to impose any durational residence requirements on medical care or hospitalization. We, therefore, have sought to compile a report for this Court concerning what requirements are actually being imposed.

We inquired of the hospital association in each state, the District of Columbia and Puerto Rico, "whether there are any residence requirements still being applied in your state or counties as a condition of public payment for indigent medical care." All replied. Where the responses appeared ambiguous, attempts were made to follow up and clarify the answer. These are the results.

	I. No Durational Residence Requirement	II. Requirements But Not Enforced Because of Federal or State Decisions	III. Requirements But Not Enforced Because of Other State Determinations	IV. Requirements Enforced
Alabama	X			
Alaska	X			
Arizona				X
Arkansas	X			
California	X			
Colorado [1]				X
Connecticut		X		
Delaware			X	
District of Columbia	X			
Florida [2]				X

[1] Colorado's Poor Law provides that the counties in Colorado shall maintain and provide medical attendance for all persons chargeable as paupers. To be chargeable as a pauper, a person must reside in Colorado for one year, be self-supporting for one year prior to that, or have resided in Colorado for at least three years immediately preceding his or her becoming so chargeable. Colo. Rev. Stat. Ann. §§ 36-10-1 to -22 ( ).

[2] Florida does not impose a statutory residence requirement. Information received from Florida, however, indicates that a one-year county residence requirement is imposed for programs funded solely from county funds. No requirements are imposed for federal or state programs.

	I. No Durational Residence Requirement	II. Requirements But Not Enforced Because of Federal or State Decisions	III. Requirements But Not Enforced Because of Other State Determinations	IV. Requirements Enforced
Georgia [3]	X			
Hawaii [4]	X			
Idaho	X			
Illinois		X		
Indiana	X			
Iowa			X	
Kansas [5]	X			
Kentucky	X			
Louisiana		X		

[3] Georgia Code § 88-2308 (Supp. 1972) imposes a six-month residence requirement for county sponsored indigent hospital care. Information received from Georgia is that this particular program is not in fact operative for anyone, resident or nonresident. There are no restrictions imposed for state or federally funded programs.

[4] Hawaii imposes a three-month requirement for abortions only.

[5] Kansas Stat. Ann. § 39-416 (1972) refers to a county's taxing ability and provides that the county hospital funds shall be used to provide and pay for hospitalization for medically indigent persons who have resided in the *county* for a period of not less than one year immediately preceding any application, and resided in the *state* for not less than two years during the four years immediately preceding any application for hospitalization. Information received from Kansas indicates that these requirements are not being applied.

	I. No Durational Residence Requirement	II. Requirements But Not Enforced Because of Federal or State Decisions	III. Requirements But Not Enforced Because of Other State Determinations	IV. Requirements Enforced
Maine	X			
Maryland	X			
Massachusetts	X			
Michigan		X		
Minnesota	X			
Mississippi [6]				X
Missouri		X		
Montana	X			
Nebraska [7]				X
Nevada	X			
New Hampshire	X			
New Jersey	X			
New Mexico	X			
New York		X		
North Carolina	X			
North Dakota	X			

[6] Mississippi Code Ann. § 43-31-19 (1972) requires a six-month residence requirement.

[7] Nebraska Rev. Stat. § 68-115 (Supp. 1972) requires continuous settlement within the county for one year prior to the application. The statute also provides that if the applicant has the one-year continuous residence within the state, he needs only to reside within the county for six months.

	I. No Durational Residence Requirement	II. Requirements But Not Enforced Because of Federal or State Decisions	III. Requirements But Not Enforced Because of Other State Determinations	IV. Requirements Enforced
Ohio [8]			X	
Oklahoma		X		
Oregon	X			
Pennsylvania		X		
Puerto Rico	X			
Rhode Island		X		
South Carolina	X			
South Dakota	X			
Tennessee	X			
Texas [9]		X		
Utah	X			
Vermont	X			
Virginia	X			
Washington	X			
West Virginia	X			
Wisconsin	X			
Wyoming	X			
	34	10	3	5

[8] Although four sections of the Ohio Code impose residence requirements (Ohio Rev. Code Ann. §§ 5105.05 (B), 5106.2(C), 5107.03(D), 5151.02(B)), information from Ohio indicates that the Ohio Department of Welfare is simply not enforcing these requirements.

[9] All Texas hospital district statutes have residency requirements. However, these requirements were held invalid in an unreported 1970-71 decision by Judge Sarah Hughes, Federal District Court in Dallas. Information received from Texas is that there requirements are not being enforced because of that decision.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

On Appeal from the Supreme Court of the State of Arizona

BRIEF ON THE MERITS OF *AMICUS CURIAE*, LEGAL AID SOCIETY OF MARICOPA COUNTY, STATE OF ARIZONA

SANDOR O. SHUCH
JOHN J. RELIHAN
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1831 West Buckeye Road
Phoenix, Arizona 85007

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